

1 MR. SPITZER: Okay. Just for the record, I'll
2 state the objection.

3 JUDGE SIPPEL: Overruled. Overruled. I think to
4 the extent that it was trial preparation or preparation of
5 this hearing, it's been waived. Because you brought
6 yourself into the -- for purposes of this witness, you
7 brought in opposing counsel or counsel acting as opposing
8 counsel into the framework of that discussion.

9 THE WITNESS: I think so, yes.

10 BY MR. WEBER:

11 Q And by your answer I think so, I guess that's a
12 yes. Do you have a reason why you answered the previous
13 question just as I think so as opposed to a more absolute
14 yes?

15 A I think I also said yes.

16 Q The record will I guess reflect that.

17 A I believe I'm telling you anything different than
18 I told Mr. Begleiter.

19 MR. WEBER: Okay. Thank you. The Bureau has no
20 further questions.

21 JUDGE SIPPEL: Did you want to pursue that at all,
22 Mr. Beckner, before we go to redirect?

23 MR. BECKNER: I wasn't in on this private
24 conversation, Your Honor. I'm handicapped here. I don't
25 know. Let me ask a few questions. I'm sure I'll draw some

1 objections from counsel.

2 REDIRECT EXAMINATION

3 BY MR. BECKNER:

4 Q Mr. Barr, just back up a little bit foundation.
5 Mr. Barr, were you aware of the fact that Time-Warner had
6 filed a motion to reopen the proceeding or reopen the
7 hearing in part based on the correction to the hearing
8 testimony that you submitted? Were you aware of that at the
9 time it happened?

10 A Yes.

11 Q Okay. Did you read a copy of the motion?

12 A Yes, I reviewed it.

13 Q Okay. And did you have any discussion with
14 counsel for Liberty about whatever it was that you intended
15 by making the correction to your hearing transcript?

16 A I think so, yes.

17 Q Okay. Did you and counsel for Liberty discuss the
18 possibility of your preparing some kind of declaration or
19 affidavit?

20 MR. SPITZER: Your Honor, I'm going to object. I
21 understand you've ruled, but I'd just like to continue an
22 objection for all these inquiries.

23 JUDGE SIPPEL: Well, I'll overrule the objection,
24 but it's noted for the record. Go ahead, Mr. Beckner.

25 THE WITNESS: Yes.

1 BY MR. BECKNER:

2 Q Okay. And ultimately, you determined, you did not
3 execute a declaration or affidavit in opposition to the
4 Time-Warner motion, is that right?

5 A Right.

6 Q Okay. Did you execute any kind of draft
7 declaration? Or was a draft of a declaration prepared by
8 you or anyone else?

9 A Yes.

10 Q Okay. Did you prepare it?

11 A Yes.

12 Q Okay. Is there anything different about what was
13 said in that declaration as compared to what you've
14 testified to here today in response to questions from me and
15 from Mr. Weber?

16 A To the best of my recollection, no.

17 Q There's nothing in the declaration and you have
18 not testified to here?

19 A I haven't looked at it or thought about it. So I
20 don't think so. But --

21 Q I understand. I'm asking just for your
22 recollection. As far as you can recall, there's nothing in
23 that declaration that you have not testified to here today?

24 A As far as I can recall.

25 Q All right. And there's nothing in that

1 declaration that's inconsistent or contradictory to what
2 you've testified to here today.

3 A As far as I can recall.

4 MR. BECKNER: All right. All right, Your Honor.
5 That's all I, that's all I wanted to ask.

6 JUDGE SIPPEL: I've got a few things I wanted to
7 ask. But before I get to that, does the Bureau have
8 specific information that's inconsistent with what this
9 witness is testifying to about this?

10 MR. WEBER: I'm not real sure how to answer that,
11 Your Honor. You know, I don't want to I guess betray a
12 confidence probably any further than what I may have already
13 done so. I mean, we have -- I guess the best way to answer
14 is that we have no specific knowledge that contradicts
15 anything that was said here today. I mean, we did not have
16 any conversations with Mr. Barr. Mr. Barr conveyed nothing
17 different to us during this time period. I guess that's the
18 best answer I can give. I mean, I feel like my hands are
19 somewhat tied because I just can't betray a confidence.

20 JUDGE SIPPEL: Well, you know, the Bureau is, I
21 mean, you're kind of stuck with this situation. And the
22 Bureau certainly has an -- in a sense you are vouching for
23 this witness because this witness, what he's telling us is a
24 lot, goes to the relief that you're asking in this case.
25 What I want to know is can the Bureau tell me that I can

1 rely on what this witness is testifying to on this narrow
2 issue that we're talking about, i.e., the correction to his
3 testimony.

4 MR. WEBER: Would it be possible for the Bureau
5 just to have like a five minute discussion with Liberty
6 counsel off the record?

7 JUDGE SIPPEL: What about Mr. -- in the absence of
8 Mr. Beckner also?

9 MR. WEBER: Yes.

10 JUDGE SIPPEL: Do you have any objection to that,
11 Mr. Beckner? I don't think you can. I will permit that.
12 And it's for what purpose? For the purpose of trying to
13 clarify this matter?

14 MR. WEBER: Yes.

15 JUDGE SIPPEL: Yes. We'll give you -- you've been
16 on the stand for a while. I'll come back at quarter past
17 3:00. We're in recess.

18 (Whereupon, a brief recess was taken.)

19 JUDGE SIPPEL: We're back on the record.
20 Mr. Weber.

21 MR. WEBER: Yes. Thank you, Your Honor, for
22 indulging me to have the opportunity to talk to Liberty
23 counsel off the record. What has become more clear is that
24 apparently what was conveyed to the Bureau was not entirely
25 accurate of what Mr. Barr had conveyed to Liberty counsel or

1 maybe more precisely it was an overstatement of what
2 Mr. Barr conveyed to counsel. And therefore, the Bureau is
3 satisfied that we can move on at this point and that the
4 Bureau has concluded its questioning of Mr. Barr.

5 JUDGE SIPPEL: All right. This still leaves me
6 uncomfortable with the state of the record at this stage
7 because -- and I think that it's just a built-in problem
8 when the Bureau joins forces with one of the other parties
9 and tries to have it both ways. And this is, I mean, I'm
10 not going to say anything more at this time about it, but I
11 just don't get the feeling that I'm getting the full scoop.
12 And so I just don't feel that I'm getting it. But that's
13 just a feeling I have. I'm just going to be open with you
14 all about it.

15 Now, I have a question and that is Mr. Barr, you
16 know, Ms. Richter testified this morning.

17 THE WITNESS: And Ms. Richter, we spent some time
18 on this Exhibit 51 which is her letter of April 20. And at
19 least twice, and probably even more than twice, she
20 testified quite clearly that she, as of the time she wrote
21 this letter, she had a concern.

22 She had a concern that there might be a future
23 mistaken premature activation on the part of Liberty because
24 of the way that she interpreted the understanding of Liberty
25 was as of that point of what their obligations were under

1 the FCC laws.

2 In other words, she was not convinced that they
3 quite understood what their obligation was to get the
4 license in hand before they activated. That's how I'm
5 hearing it. She testified at least twice and I think even
6 more than twice that she had concerns of a premature
7 activation some time down the road.

8 Now, I say that to you because to preface my
9 question to you and that is as of April, May, this time
10 period in 1993 when you're talking about STAs. Did you have
11 any premonitions that there might be some premature
12 activations based on your dealings at Liberty?

13 THE WITNESS: No. Again, I really didn't have --

14 JUDGE SIPPEL: Maybe premonition is not the fair
15 word. Did you have concern? I mean, you make it sound as
16 though you had absolutely nothing to think about that of an
17 adverse nature could happen there. And yet, Ms. Richter
18 seemed to feel, she seemed to be picking up some vibrations
19 in her dealings with Liberty that they may not quite have
20 it. They may not quite understand what their
21 responsibilities are under the laws. And I'm asking it --
22 I'm hearing it differently from you. That puzzles me.

23 THE WITNESS: I didn't have the dealings with
24 Liberty that Ms. Richter did.

25 JUDGE SIPPEL: You didn't.

1 THE WITNESS: No. She was primarily responsible
2 for the account at that time. I was really not doing very
3 much work at all for them.

4 JUDGE SIPPEL: Was there any time up until -- I'll
5 ask the question, is there any time between April of '93 and
6 before April 27th of '95 that you had again concerns that
7 something might be amiss there?

8 THE WITNESS: No.

9 JUDGE SIPPEL: Was that because nothing came to
10 your attention or because you were not dealing that much
11 with the account? It was Mr. Lehmkuhl at that time? I
12 mean, are you just too far removed from the scene to have
13 been able to pick up this kind of --

14 THE WITNESS: Right. I think it's fair to say
15 both.

16 JUDGE SIPPEL: I'm asking you three questions at
17 one time, but go ahead. You say it your way.

18 THE WITNESS: Well, right. Number one, nothing
19 had been conveyed to me. And number two, I don't think I
20 was close enough to the account such that I could glean
21 anything like that.

22 JUDGE SIPPEL: When you learned at or about the
23 time that you did learn, your testimony being that it was on
24 the 27th of April, was there any effort or even any
25 inclination on your part to give Ms. Richter a call and say

1 how did this happen?

2 THE WITNESS: Something to that effect. I don't
3 know. I don't know that I -- I might have called her. I'm
4 not sure that I did or that I didn't.

5 JUDGE SIPPEL: Well, it would seem to me that if
6 you did, it would be a phone call that you pretty much
7 remember. Things were really, the lightening was kind of
8 striking about that time, April 27th, if I'm not -- the way
9 I've been hearing it so far.

10 THE WITNESS: Well, in terms of finding out that
11 they had been operating without authority, right. The
12 lightening did strike on that day.

13 JUDGE SIPPEL: But you don't have, well, my
14 question would be --

15 THE WITNESS: Do I recall thinking about calling
16 Ms. Richter? No, I don't know.

17 JUDGE SIPPEL: Well, your testimony here has been,
18 and certainly she's testified that she was, she did have a
19 lot of responsibility and she certainly was doing a
20 considerable amount, to put it mildly, considerable amount
21 of licensing work for Liberty during this period, starting
22 with April, well, before the 23rd -- 1993, April of 1993 up
23 to April of 199 -- until the time she left the firm rather.
24 It would just seem to me that that would be a logical place
25 to at least to start if you're trying to find out what was

1 going on.

2 THE WITNESS: Well, I'm not sure that -- I don't
3 know.

4 JUDGE SIPPEL: I don't know if you agree with me.
5 I'm just saying that this is why I'm asking these questions.
6 Because you didn't talk to, you didn't go in and talk to
7 Mr. Lehmkuhl. You testified to that last time. And now you
8 didn't call, and we didn't realize, at least I didn't
9 realize what role that there was even of Ms. Richter to play
10 a role such as this. But she was the predecessor to Mr.
11 Lehmkuhl as far as doing substantial work for Liberty in
12 this area of license. And she wasn't called either. Or you
13 can't recall. There was no --

14 THE WITNESS: Well, in the April '95 timeframe, I
15 think she had been gone for some time. And the other
16 problem is Ms. Richter's company is a client of ours and I
17 talk to her with some amount of regularity.

18 JUDGE SIPPEL: Well, all right. That's all I have
19 really.

20 MR. SPITZER: Your Honor, I just have really very
21 few questions.

22 CROSS EXAMINATION

23 BY MR. SPITZER:

24 Q Mr. Barr, I ask you to look at Exhibit 9 -- Tab 9,
25 TW/CV 60 in the thin binder that I think is before you. Do

1 you recognize that to be the bill -- it's dated April 10,
2 '93 and it's the billing period of March, 1993?

3 A Yes.

4 Q Quickly look over that document. Do you see
5 whether you billed any time at all in the month of March,
6 1993?

7 A There are no entries for me.

8 Q I would ask you to look at the next tab which is
9 TW/CV 61 and I'd ask you if the only time you billed was in
10 the last three days of that month, 28th, 29th and 30th, is
11 that correct? There was no time at all billed to Liberty
12 prior to that?

13 A Yes, that's correct.

14 Q And I would ask you to look at Tab 12 which is
15 TW/CV 63 which is the month of the bill dated June 10th for
16 the month of May 1993. Is there any time at all billed by
17 you to Liberty Cable in that month?

18 A No.

19 Q So I stopped there only because I think those are
20 the only bills in evidence here. So that during those three
21 months the only work at all that you did for Liberty was
22 preparation of the STAs reflected on that. And that window
23 when your recollection is that Ms. Richter was on vacation.

24 A Apparently so.

25 Q Or otherwise unavailable.

1 A Apparently so, yes.

2 Q I'd also just like to go back to an issue that was
3 raised before in terms of your preparation of an affidavit
4 in response to Time-Warner's motion to enlarge that was
5 denied. And also their simultaneous motion for additional
6 depositions. Do you recall preparing an affidavit in that,
7 in response to that motion?

8 A Yes.

9 Q And do you recall that that affidavit was
10 identical in substance to your testimony here today?

11 A Yes.

12 Q And do you recall that it was the decision of the
13 lawyers representing Liberty not to attach that affidavit to
14 the motion in opposition because it was believed it would be
15 pointless and it was inevitable that your deposition would
16 be taken?

17 A That's my recollection. I was fully willing to
18 give the declaration.

19 MR. SPITZER: I have nothing further, Your Honor.

20 JUDGE SIPPEL: That's it. That's it. We're
21 finished with this witness. You're excused, Mr. Barr.

22 THE WITNESS: Thank you, Your Honor. JUDGE
23 SIPPEL:

24 [Witness exits.]

25 JUDGE SIPPEL: Tomorrow we have, we have, first,

1 we have Mr. Price and then Mr. Nourain. Do I have the order
2 correct on that?

3 MR. BECKNER: Yes, Your Honor. There's --

4 JUDGE SIPPEL: Go ahead. I was going to ask this
5 question. On Mr. Nourain now, remember I also left the
6 record open for purposes of questioning him on the
7 affidavits.

8 MR. BECKNER: We're intending to do that, Your
9 Honor.

10 JUDGE SIPPEL: All right. Do we have documents to
11 do that with? There's one affidavit that was received into
12 evidence in the prior hearing?

13 MR. BECKNER: I think the other affidavit is part
14 of another exhibit that's already in evidence. Is it 18?

15 JUDGE SIPPEL: Both of the affidavits are in? I
16 knew one, I can recall one. But --

17 MR. SPITZER: If there's one missing, we'll
18 stipulate to having them introduced so there's no issue
19 about their having been --

20 MR. BECKNER: No, it's Exhibit 13, Your Honor, is
21 the February affidavit that Mr. Nourain filed in Federal
22 District Court in New York. And the others attached to the
23 surreply which is TW/CV Exhibit 18. So they're both here.

24 JUDGE SIPPEL: All right.

25 MR. BECKNER: There's just a minor housekeeping

1 matter. I was discussing with counsel for Mr. Nourain,
2 Ms. Kiddoo and Mr. Rindler, the scheduling of his testimony.
3 I don't think Mr. Price is going to take long. Although you
4 never know with Mr. Price. He's fairly talkative. And so
5 the question --

6 JUDGE SIPPEL: That depends upon the questions
7 too. But go ahead.

8 MR. BECKNER: The question is whether or not we
9 tell Mr. Nourain to be here say at 10:30 and have him hang
10 around on the assumption that we'll get started some time
11 before lunch or whether or not we simply agree now to tell
12 him to be here at 1:00 o'clock so that he doesn't kill time
13 waiting with the understanding that, of course, we'll finish
14 him up before the end of the day. And recognizing that we
15 may finish up Mr. Price before lunch so there might be a two
16 hour gap or something at lunch time.

17 JUDGE SIPPEL: Well, Ms. Kiddoo's in the Courtroom
18 now. If Mr. Nourain's going to be in Washington to get this
19 hearing worked on tomorrow that he ought to be around.

20 MS. KIDDOO: Well, he's planning on taking a
21 9:00 o'clock plane from New York which will get him to this
22 building by about 10:30 I think. But obviously, he could
23 take a later plane and be at his office in the morning.

24 JUDGE SIPPEL: No, that doesn't, let him stick to
25 the schedule that you just outlined and he should check in

1 here as soon as he gets to Washington and see how things are
2 going. And we'll just pick it up from there.

3 MR. BECKNER: Okay. I just wanted to bring it up,
4 Your Honor, since I discussed that.

5 MS. KIDDOO: We appreciate Mr. Beckner's concern
6 because it is, if he was not going to be on until after
7 lunch, if things are going slowly in the morning, he could
8 obviously wait at our office and use the telephone and other
9 things and get some work done.

10 JUDGE SIPPEL: Well, I will concede that we can't
11 offer the amenities here that I'm sure that you can, but
12 that's just the way it goes. But if he comes here at 10:30
13 or quarter of 11:00 and sees how things are going and we can
14 go off the record and make a determination at that point.
15 We'll certainly try to accommodate him as well as everybody
16 else. But that's it.

17 But before I close this record today, I meant to
18 say this up front, but of course it's clear. So that
19 everything, the record is clear on this, that all of this is
20 going to be on the public record, both the testimony, all of
21 the exhibits that are being introduced into evidence. This
22 session is entirely on the public record. And I have
23 nothing more to say. We'll be back at 9:30 tomorrow
24 morning. Thank you, very much.


25 (Whereupon, at 3:34 p.m. the hearing was recessed.)

REPORTER'S CERTIFICATE

FCC DOCKET NO.: WT 96-41
CASE TITLE: Liberty Cable
HEARING DATE: May 28, 1997
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.


Date: 5/28/97


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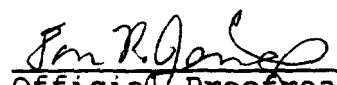
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